Heading off Traumatic Brain Injury: An Analysis of Concussion Legislation in the United States

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It is unlikely that you can turn on Sports Center or open up the sports pages without reading something about concussion. Concussion is also a hot legal topic, with states scurrying to enact sport-related head injury legislation. Three class action lawsuits have also been filed. Two different groups of retired NFL players have filed lawsuits against the NFL for failing to warn and protect players against the long-term risks associated with football related concussions (Maxwell v. NFL, 2011; Easterling v. NFL, 2011). Similarly, two former college football players who claim to suffer the residual effects of head injuries have filed a lawsuit against the NCAA (Owens v. NCAA, 2011).

One way to address the public health implications of concussion is to enact legislation - the recently enacted Gfeller-Waller Concussion Awareness Act (2011 N.C. ALS 147) is an example. The bill is named in memory of Matthew Gfeller, (Winston-Salem Reynolds High) and Jaquan Waller (Greenville Rose High), high school football players who died from sports related brain injuries. Highlights of the Gfeller-Waller Concussion Awareness Act include mandatory sharing of concussion information with all athletics-related school personnel, plus volunteers, student-athletes and their parents, and requirements that student-athletes who exhibit signs of concussion be removed from activity, return to play decisions are made by a qualified health care professional, and schools develop emergency action plans that are reviewed by a licensed athletic trainer. The strength of the North Carolina legislation is that it will raise awareness of the serious health risks associated with concussions. However, the legislation is significantly weak in that it is limited to athletes who participate in school based sports programs. It also fails to identify penalties for schools that are not compliant with the legislation.

The purpose of this exploratory legal research study is to identify and examine the current and proposed concussion-related legislation. Specific legal research questions include:

1. What states have enacted concussion legislation, and what states have proposed, or are considering legislation?

2. What is the stated purpose of the legislation?

3. What affirmative behavior/action does the legislation require?

4. Who does the legislation govern?

5. How is the law enforced?

6. What are the penalties for non-compliance?

7. From a public policy perspective, what are the strengths and weaknesses of the legislation?

Legal research is an important tool that plays a critical role in public health law policy. The purpose of public health law policy is generally to improve the health of the general population within social and legal limits (Tietelbaum & Wilensky, 2007). This research examines concussion legislation as a public health policy tool in the prevention of injury and disease, focusing on the purpose and role of the law with the goal of identifying strengths and weaknesses.

This legal research study measures the law – as such, state legislation and proposed legislation constitute the data. The state statutes were identified using the Lexis and Westlaw legal database search engines. In examining the statutes, considerations of “precision, sensitivity, specificity, validity and reliability” were taken into account for
coding each element of the law (Tremper, et al, 2009). Categorical variables for measuring the law include: full legal citation, enactment date, effective date, legal provisions, populations covered, enforcement provisions, and not sure/other. The legal provisions categorical variable was multi-layered with subcategories for education, treatment, return-to-play, and other. Two researchers examined each statute independently and then compared coding. Discrepancies were reviewed until there was agreement.

Thirty states have enacted or have proposed concussion legislation. Common purposes for the legislation include raising awareness of concussion as a traumatic brain injury that can lead to death, and prevention of unnecessary deaths in sports. Common elements of the statutes include education and protocols in managing concussion. Strengths of the statutes include mandatory dissemination of information; the biggest weaknesses include a lack of funding, penalty or enforcement. Implications for future litigation and risk management policies for sport managers will also be discussed.